FILE COPY

FILED
DEC 26 1947
CHARLES ELMORE CROPLEY
CLERK

No. 370

In the Supreme Court of the United States

OCTOBER TERM, 1947

FONG HAW TAN, PETITIONER

v.

ARTHUR J. PHELAN, Acting District Director, Immigration and Naturalization Service, Port of San Francisco, California.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

LAMBERT O'DONNELL,
1118 Woodward Building,
Washington 5, D. C.

WILLIAM J. CHOW,
THOMAS C. LYNCH,
550 Montgomery Street,
San Francisco, Calif.
Counsel for Petitioner.

SUBJECT INDEX

	PAGE
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement of fact	3
Argument	6
Conclusion	20

CITATIONS

Cases:	PAGES
Clark v. Orabona, 59 F. (2d) 187, cert. den. 287 U.S. 629	10, 11, 14
Johnson v. U. S. ex rel. Pepe, 28 F. (2d) 810	7, 10
Nishimoto v. Nagle, 44 F. (2d) 304	5, 6, 7, 9, 10
Opolich v. Fluckey, 47 F. (2d) 950	13, 14, 19
Tassari v. Schmucker, 58 F. (2d) 570	9, 19
U. S. ex rel. Babac v. Perkins, D.C.W.D. Pa. Jan., 1936 (unreported)	13, 14
U. S. ex rel. Guerricia v. Reimer, 79 F. (2d) 1019	9, 14
U. S. ex rel. LaGrutta v. Hughes, D.C.D.N.J. 1938 (unreported)	13, 14
U. S. ex rel. Mignozzi v. Day, 51 F. (2d) 1019	8, 10, 14, 19
U. S. ex rel. Turco v. Commissioner of Immigration, 58 F. (2d) 1087	8, 14
Wallis v. Tecchio, 65 F. (2d) 250	11, 14, 15, 19
Ng Fung Ho v. White, 259 U. S. 276, 42 S. Ct. 492, 66 L. Ed. 938	20
Statutes:	
Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874, 889, as amended (8 U.S.C.A. 155 (a)), Section 19 (a)	2
California Penal Code, Section 190	3
Miscellaneous:	
64th Congress, 1st Sess., Senate Report No. 352, p. 15	18
Congressional Record, Vol. 53, pp. 5167-5168	17

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 370

FONG HAW TAN, PETITIONER

v.

ARTHUR J. PHELAN, Acting District Director, Immigration and Naturalization Service, Port of San Francisco, California.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Circuit Court of Appeals and the concurring opinion (R. 24-29) are reported at 162 F. 2d 663.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 25, 1947 (R. 30). The petition for writ of certiorari was filed September 24, 1947. The jurisdiction of this Court is invoked under Sec-

tion 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien, resident in this country for more than five years, having been convicted of the crime of murder of the first degree on two separate counts of a single indictment, committed on the same occasion, who has received a sentence to a term of life imprisonment, is subject to deportation within the meaning of Section 19 (a) of the Immigration Act of 1917, as one who has been "sentenced more than once" to a term of imprisonment for one year or more because of conviction of any crime involving moral turpitude.

STATUTE INVOLVED

Section 19 (a) of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 889 (8 U.S.C.A. 155(a)) provides in part:

> Sec. 19 (a) * * * except as hereinafter provided, any alien who, after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * * The provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such depor-

tation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this Act; * * *.

STATEMENT OF FACT

Petitioner was detained by the respondent under a deportation order; a petition for a writ of habeas corpus was filed to test the legality of that order. The District Court denied the petition; the Circuit Court of Appeals affirmed that action, 162 F. 2d 663. The case is before this Court on a petition for a writ of certiorari, which was granted on November 10, 1947.

The petitioner is a citizen of China.[1] In 1910, then aged sixteen, he was lawfully admitted into the United States for permanent residence. He has resided in the United States continuously since that time. In June, 1925, an indictment in two counts was returned in the Superior Court, Fresno, California, charging petitioner (under the name Ong Ton) with the murder of two persons on the same day, May 22, 1925, in Fresno. Petitioner was found guilty on both counts and, under the California system [2] the jury fixed the punishment

[1] Certain of the facts are found in the original record of the Immigration and Naturalization Service relating to the petitioner, an exhibit filed with the Clerk of this Court.

[2] California Penal Code, Sec. 190.

at life imprisonment on each count. The judgment of the Superior Court, after reciting the proceedings, including the verdicts of the jury on each count of the indictment, contains the sentence as follows:

> It is Therefore ORDERED, ADJUDGED and DECREED, That the said Ong Ton be punished by imprisonment in the State Prison of the State of California at San Quentin for a period of his natural life, or until legally discharged.

The petitioner was thereafter incarcerated at San Quentin. While so incarcerated, his case was investigated by the immigration authorities, which resulted, in September, 1925, in the issuance of an immigration warrant for his arrest charging that petitioner "has been *sentenced*, subsequent to May 1, 1917, *to imprisonment more than once* for a term of one year or more for the commission subsequent to his entry of a crime involving moral turpitude," and should show cause why he was not deportable. A hearing was held by an immigrant inspector at San Quentin; petitioner was not represented by counsel and was reported to have waived representation by counsel. The inspector thereafter recommended that the petitioner be deported; and the case came to the Secretary of Labor for decision. Upon consideration by the then "Secretary's and Commissioner General's Board of Review," in March, 1926, that Board found:

> Fong Haw Tan is shown to have been admitted to the United States as indicated in the caption hereof. He is now serving *two sentences of life imprisonment* having been convicted under two counts in an indictment,

each count having charged him with having murdered a human being, and each count naming a different person as the one murdered.

It is recommended that, when released from prison, Fong Haw (Ho) Tan (Ton) alias Ong Ton, be deported to China at Government expense on the grounds stated in the warrant for his arrest. (Emphasis supplied.)

This finding and recommendation was approved by the Second Assistant Secretary of Labor who, on March 20, 1926, issued a warrant of deportation ordering the petitioner's deportation to China on the same ground charged in the warrant of arrest; it was further ordered that execution of the warrant of deportation be deferred until petitioner had been released from prison. On November 14, 1941, an official of the Department of Justice [3] issued an amended warrant of deportation in substantially identical terms as the first one.

Petitioner was released from San Quentin on February 18, 1942, into the custody of the Immigration Service; deportation to China being then impossible, he was released on his own recognizance. Petitioner remained at large until 1946, when he was again taken into custody by the Immigration Service for deportation to China. Filing of the habeas corpus petition followed.

The District Court denial of the petition for habeas corpus relied "Upon the authority of Nishimoto v. Nagle, 44 Fed. 2d 304, Cir. 9," (R. 8)

---

[3] The Immigration and Naturalization Service was transferred to the jurisdiction of the Department of Justice on June 14, 1940.

which is the gist of the Circuit Court opinion. In affirming the judgment of the District Court (R. 30), however, in a concurring opinion, Healy, C. J., said:

> I have serious doubts whether Congress intended the deportation statute to apply to a case like this. I concur in the affirmance only for the reason that this court, in Nishimoto v. Nagle, 44 F. 2d 304, has already decided the point, and should, until higher authority has spoken, follow that decision.

ARGUMENT

Summary of Argument

Point 1. The decision below is contrary to and in conflict with prior federal court decisions, and contrary to the weight of authority.

Point 2. The statute is ambiguous, and the legislative history shows that Congress did not intend that deportation should follow from a sentence imposed in the circumstances of this case.

Point 1

CONFLICT WITH PRIOR FEDERAL COURT DECISIONS AND WEIGHT OF AUTHORITY.

Other than for its own pronouncement in *Nishimoto* v. *Nagle*, 44 F. 2d 304, the decision of the court below is in some conflict with all of the several decisions rendered by other federal courts, and contrary to the weight of authority. The court below erred, first, in holding that there was a "distinct and separate sentence of imprisonment" (R. 25), or "two pronouncements of sentence upon two verdicts of guilty" (R. 26), whereas respondent's original Exhibit A, filed with the return to order

to show cause (R. 8), shows that *a life sentence* was imposed by the trial court on the separate verdicts of the jury. The court below may have ignored this salient fact because it stressed the view that "deportation results from and because of the *commission* of the base deed" (R. 26); and in the *Nishimoto* case, 44 F. 2d 304, 306, said: "* * * the statute does not limit the power of deportation to a second conviction, but is based upon the *commission* of a number of offenses for which the alien has been sentenced." It is the position of the petitioner that this is the root of the error of the lower court's decision; wherein the court has relied upon the *commission* of offenses, rather than the *sentencing* after conviction, as the test of deportability; and a careful analysis of the cases in other circuits shows that the instant and Nishimoto decisions stand alone.

There are four reported cases construing the statute in the Circuit Court of Appeals, Second Circuit. In the first, *Johnson* v. *United States ex rel. Pepe*, 28 F. 2d 810, the alien pleaded guilty to an information charging arson, in nine counts, which charged distinct offenses of arson committed on different dates and at different buildings; he was sentenced to confinement at hard labor for a term of one year or more *on each of four counts*, the sentences to run *consecutively*. The District Court held, 26 F. 2d 288, that the deportation statute required that *the act of sentencing be performed more than once*, and ordered relator's discharge. In reversing, the Circuit Court held (p. 811):

> In its natural and reasonable meaning "sentenced more than once to such a term of imprisonment" refers to the number of separate crimes *for which sentences are imposed*, not the form of the indictment or the procedure of a single trial. (Emphasis supplied.)

Clearly this result could not have been reached had there been a single sentence.

The second case in the Second Circuit, *United States ex rel. Mignozzi* v. *Day*, 51 F. 2d 1019, involved an alien who pleaded guilty to two indictments, one in a single count, the other in two counts, charging separate offenses for counterfeiting violations committed at two different times, and was sentenced generally by the District Court to a term of seven years, the "sentence to run concurrently." The Circuit Court, though purporting to adhere to its decision in the Johnson case, specifically held that a judge must actually "twice" sentence the alien to imprisonment for one year to support a deportation order. The gist of the reasoning of L. Hand, *C.* J., is this (p. 1021):

> It is the duplication of penalties which counts; and the test of these is practical, not procedural.

And directed the relator's release.

The two later cases were decided *per curiam* by the Second Circuit Court of Appeals on the authority of *Mignozzi* v. *Day*, 51 F. 2d 1019. In the first, *Turco* v. *Commissioner of Immigration*, 58 F. 2d 1087 (1932), Turco had been sentenced to a term of two years' imprisonment on each one of seven counts of an indictment for a like number of separate offenses of possession of, or passing, counterfeit money; the sentences were made to run con-

currently. The court held such sentences were insufficient basis for deportation. The same result followed in *Guerricia* v. *Reimer*, 79 F. 2d 1019 (1935), where the Court held against deportation of an alien who had been convicted of the commission of two separate and distinct robberies and one assault with intent to kill, all the victims being different persons, and the crimes having been committed over a period of about two weeks, being sentenced to terms of imprisonment of more than one year in each case.

In 1931, the Ninth Circuit Court of Appeals handed down, in the *Nishimoto* case, 44 F. 2d 304, the most broad interpretation of the phrase "sentenced more than once" which had been rendered up to that time, holding that the commission of more than one crime involving moral turpitude, conviction thereof, and imposition of *separate sentences*, whether to run concurrently or consecutively, met the test of the deportation statute. It is this interpretation which is applied in the instant case despite the serious doubt of the minority, concurring opinion that Congress intended the deportation statute to be applied in such a case as the instant one. This suggests that even the lower court's prior ruling may not support the decision in this case.

Also in 1931, the Fourth Circuit Court of Appeals confronted the problem in the case of *Tassari* v. *Schmucker*, 53 F. 2d 570. In that case there were two separate crimes, the second committed while the alien was released on bond on the first charge, two separate indictments, two separate trials at different times and two separate sen-

tences at different times. The Court endeavored to reconcile the decisions in the cases of *Mignozzi*, 51 F. 2d 1019; *Johnson*, 28 F. 2d 810, and *Nishimoto*, 44 F. 2d 304, and said (p. 571):

> In our opinion the correct principle to be deduced from these decisions is that where the crimes are separate and distinct, and there is a separate sentence for each offense, it must be held within the meaning of the act that the alien has been "sentenced more than once" even though the separate sentences are made to run concurrently and not consecutively. * * * As the crimes were *separate and distinct and successive, and the sentences likewise separate and distinct*, the alien is clearly brought within both the language and the intent of the statute. (Emphasis supplied.)

In that case the Court also pointed out (p. 573-4) that Tassari had been convicted of other crimes on at least nine occasions and observed: "If such an *habitual criminal* is not subject to deportation it would seem that the purpose of the act would be ineffective." (Emphasis supplied.) It will be seen that this language is of importance to the problem, in regard to the *purpose* of the statute.

The First Circuit Court of Appeals decided the case of *Clark* v. *Orabona*, 59 F. 2d 187, in 1932, and held that the shootings of two persons by the alien on the same occasion, followed by two separate indictments, conviction and two separate sentences at widely separated times, brought him within the deportation statute. The second sentence came *seven years after* the first, and imposed a term of imprisonment of seven years upon one indictment after the defendant had served a term

of imprisonment of four and one-half years to which he was sentenced on the first indictment. It is interesting that this holding reversed the District Court decision, 53 F. 2d 101, 102-3, wherein Letts, D. J., said:

> It is wholly consistent with the holding in both the Johnson and Nishimoto cases to interpret the purpose of Congress as expressed in the statute as being to authorize the deportation of persons who have been in this country more than five years only when on two separate occasions after entry they shall, in their behavior, have exhibited a baseness of character amounting to moral turpitude resulting in consequences sufficiently serious to warrant the imposition of the substantial sentences mentioned. I do not believe it was the intent to authorize the Secretary of Labor to order deported an individual such as the petitioner in this case, who, in a single episode, a sihgle mental derangement having a multiple result, had exposed himself, through the niceties and formalities of criminal procedure, to two specific charges.

The Circuit Court, however (p. 189), pointed out that there was no evidence that the offenses were not the result of "separate voluntary acts," and that the two sentences, imposed at different times, brought the alien within the provisions of the statute "if the literal interpretation of the statute is to govern." This Court denied a petition for certiorari, 287 U. S. 629.

In the following year (1933) the Circuit Court of Appeals, Fifth Circuit, considered the problem in *Wallis* v. *Tecchio*, 65 F. 2d 250, wherein the alien Tecchio had committed at least four counter-

feiting offenses within a period of several weeks, and had been convicted on four counts of one indictment. The sentence on the first two counts was to a term of imprisonment for two years, on each, the sentences to run consecutively; and on the remaining two counts, for two years, to run concurrently with the first two. The Circuit Court held (p. 252):

> Congress has here in the same provision used four expressions, crime, conviction, term of imprisonment and sentence with evident appreciation of their several proper meanings. Deportation is not rested on the mere commission of crime; but there must be conviction in this country, its courts must be troubled and the alien here publicly scandalized by sentence, and his punishment made as severe as a year in the penitentiary. After five years' residence his ties here may not be broken unless he has thus been "sentenced more than once." The language is not "sentenced for two crimes" or for "two terms in the penitentiary," but "sentenced more than one time." The difference between a sentencing and the terms of imprisonment which may be imposed by it is plain. The alien is sentenced once when, after a conviction or plea of guilty, he is called before the bar and receives judgment, whether for one or several crimes, with one or several terms of imprisonment. He is sentenced more than once when that happens again. It is no fair rendering of the words to say that a sentencing at the same time for two crimes suffices, or that to receive two terms of imprisonment imposed by the same sentence is to be sentenced more than once. One must have burdened the country's courts with his prosecution, and have

been publicly branded as a criminal by his sentence on at least two occasions. It may be within the choice of the prosecutors to so mould the proceedings as to make two separate prosecutions out of a situation, or to consolidate them into one; but should the former course be oppressively followed, the judge may defeat it by the power given him in the statute to veto deportation.

It will be noted that in the instant case, the Court referred to the decision of the District Court, Northern District of Georgia, in *Opolich* v. *Fluckey*, 47 F. 2d 950, where, after conviction on a four count counterfeiting indictment, there had been sentence to a fine and two years in the penitentiary, service "to be concurrent," without specifying which counts the sentence was upon. The Court, in granting the petition for writ of habeas corpus, said that "Congress had in mind what are commonly called 'repeaters,' that is to say, persons who commit a crime and are sentenced, and then commit another and are sentenced again."

It is of some significance to note that the District Court, District of New Jersey, in the unreported case of *LaGrutta* v. *Hughes* (1938) held that an alien had not been "sentenced more than once" even though he had been charged in separate indictments with, and convicted of, sex offenses committed against different little girls, on at least two distinct and separate occasions; there was also a separate sentence on each indictment to a term of imprisonment of from three to five years, the second to run concurrently with the first. A similar result was reached in a similar unreported case, *Babac* v. *Perkins*, D.C.W.D. Pa. (Jan. 1936).

Respondent argued in opposition to granting the petition (Br. 7) that the trial judge "could not impose cumulative sentences," and that only one life sentence could be obtained by the State; the lower Court did not think so, as demonstrated in its opinion (pp. 25-26). Nor can it be agreed that it would be impossible to effect deportation for two murders nor that it would be unusual for a prosecutor to separately prosecute two "airtight capital cases;" if this latter statement were accurate then a convict serving a life term would be practically immune from prosecution on a homicide charge. A practical view—of the very facts in this case—is that under most systems of rehabilitation the question of the parole of the prisoner may be taken up far short of completion of service of his term; after about fifteen years, here. Otherwise, the whole proposition involved in this case would be moot—as the convict is required by the deportation statute to serve out his term before the warrant of deportation may be executed.

It must be observed that in the cases of *Mignozzi*, 51 F. 2d 1019; *Turco*, 58 F. 2d 1087; *Guerricia*, 79 F. 2d 1019, and *Tecchio*, 65 F. 2d 250, the Government did not petition this Court to grant writs of certiorari to review the decisions of the Circuit Courts. And in the cases of *Opolich*, 47 F. 2d 950, and *La Grutta* and *Babac* (both unreported) no appeals were taken by the Government to the Circuit Courts of Appeal, even though all those rulings reached results at direct odds with that in the *Orabona case*, 59 F. 2d 187. It may be concluded that the then Solicitors-General agreed,

then, with the conclusions reached in those cases and did not wish to have those decisions disturbed.

In fact, after the decision in the *Tecchio* case, 65 F .2d 250, the Government abandoned its right to seek review of that decision, because a new administrative interpretation of the law, consistent with the ruling in the *Tecchio* case became the new policy in the administrative decision of all deportation cases falling under the section in question. This policy was to the effect that there must have been at least two separate and distinct crimes committed, two separate and distinct prosecutions therefor and two separate and distinct sentences, at different times, as prerequisites to an order of deportation.

Moreover, following the decision in the *Tecchio* case, administrative rulings in some deportation cases held that there must have been service of the term of imprisonment for the first crime before the second crime was committed, or that the second crime must have been committed, after sentence for the first, before the condition laid down by the statute could be met. Further, deportation was not ordered where, by a single course of criminal conduct; an alien's offenses were multiplied into numerous counts of an indictment, or different indictments, with separate sentences on counts or indictments at one time.

Such administrative interpretations were followed from about the time of decision of the *Tecchio* case, 65 F. 2d 250 (or about 1933), until about 1944. The administrative interpretation of the statute over so long a period of time, and con-

sistent application of that interpretation to cases arising during that period, is entitled to great weight in determining the meaning of the statute. It is fair to speculate that had this case arisen in 1935, rather than 1925, the petitioner's deportation proceedings would have been cancelled by administrative decision.

To summarize, in this case we have two crimes committed on the same occasion, apparently as a result of the same impulse, followed by one indictment (in two counts), one trial, and one sentence. It is immaterial to the petitioner whether the test of deportability be the number of sentences more than one, the "duplication of penalties," crimes which were "separate and distinct and successive" and "sentences likewise separate and distinct," two separate sentences at widely separate times, or the requirement that the alien be tried and "sentenced more than one time;" for it is apparent that had any or all of these tests been applied to his case, the writ of habeas corpus must have been granted. Indeed, it seems clear that had petitioner's case arisen in any one of the other Circuits which have passed upon the question, his release would have followed. This overwhelming weight of authority in petitioner's favor is a demonstration of the error of the extreme position of the lower court, and definitely supports the contention that the deportation warrant is without lawful sanction.

Point 2

THE STATUTE IS AMBIGUOUS, AND THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT INTEND THAT DEPORTATION SHOULD FOLLOW FROM A SENTENCE IMPOSED IN THE CIRCUMSTANCES OF THIS CASE.

The fact of the quite wide divergence of judicial opinion—inherent in the very concurring, minority opinion of the court below in this case—and of administrative action, demonstrates that the statute is so ambiguously worded as to warrant resort to the reports of the proceedings in the Congress prior to its passage, as the index of legislative intent. The portion of the section directly in discussion was a provision which was added, as an amendment, to the bill while it was under debate on the floor of the House of Representatives (Cong. Rec., Vol. 53, pp. 5167, 5168). Perhaps the principal and most material phase of the debate in this connection is the statement of Representative Burnett, who was in charge of the bill on the floor of the House, and who spoke in favor of the amendment, which had been proposed by Representative Sabath:

> But the suggestion was then made by the gentleman from Illinois (Mr. Sabath) that those *who committed a second crime* involving moral turpitude showed then a *criminal heart and a criminal tendency*, and they should *then* be deported; and the committee unanimously agreed with the gentleman that that ought to be done. The police commissioner wrote me a letter in which he stated that upon examinations of the prison records he found that there were a great many of those cases, *of men who*

served out their sentences and then renewed their careers of crime. (Emphasis supplied.)

Speaking of his own amendment, Representative Sabath said:

> My amendment provides that after a *second offense* committed by such an alien, or where he has been for the *second time convicted*, the five year limitation should not apply. In other words, even though he may have been residing in the United States for five years or more, if he is *for the second time convicted* of any offense or crime involving moral turpitude, he should be deported. (Emphasis supplied)

The most cursory analysis of these statements shows that the Representatives responsible for the introduction of the amendment and the passage of the bill as amended clearly had in mind that the alien who was *a second offender* should be deported—aliens who committed "a second crime" after having committed the first, who were confirmed criminals, who served out the first sentence and then "renewed their careers of crime" and were for "a second time convicted."

Moreover, the Senate adopted the view of the House, for in Report No. 352, 64th Congress, 1st Sess., p. 15, the Senate referred to the proceedings in the House as reported in the Congressional Record (wherein the amendment had been made and the statements of its proponents, interpreting it, had been reported), and referred to the provisions of the amendment as "intended to reach the alien who after entry shows himself to be a criminal of the *confirmed type*, such aliens to be deported without limitation on the length of time

after entry when they commit *a second* serious offense." Again is carried through the idea of the commission of a *first* offense, the service of sentence, freedom and then the *second* offense and punishment, with deportation added to rid the country of the "confirmed" criminal, the "repeater."

The judicial interpretations which most nearly square with the Congressional intent, as plainly indicated by all of the statements, made in either House or Senate relative to the amended section, are those of the Circuit Court in the case of *Wallis* v. *Tecchio*, 65 F. 2d 250; and the District Court in the case of *Opolich* v. *Fluckey*, 47 F. 2d 950. Certain of the expressions in the *Tassari* case, 53 F. 2d 570, and, of course, that of *Mignozzi*, 51 F. 2d 1019, are close to the mark. The former administrative interpretation, which followed the principles laid down in the Tecchio case, coincided with the views of those in the Congress responsible for the enactment of the provision in question.

As recently as November 10, 1947, this Court declared, as it has often in substance repeated:

> Deportation can be the equivalent of banishment or exile. See Bridges v. Wixon, 326 U. S. 135, 147, 89 L. Ed. 2103, 2111, 65 S. Ct. 1443. The stakes are indeed high and momentous for the alien who has acquired residence here.

The alien here concerned has not seen his native country since he was in his middle teens, and has lived for the past thirty-seven years in the United States. Deportation to China under present conditions would most certainly deprive him "of all

that makes life worth living," *Ng Fung Ho* v. *White*, 259 U. S. 276, 284, 42 S. Ct. 492, 66 L. Ed. 938.

CONCLUSION

It is respectfully submitted that this Court should reverse the decision herein of the Circuit Court of Appeals for the Ninth Circuit, and order that the petition for habeas corpus be granted.

LAMBERT O'DONNELL,
WILLIAM J. CHOW,
THOMAS C. LYNCH,
Counsel for Petitioner.

Dated, Washington, D. C.
December 17, 1947.